

1
2
3
4
5
6
7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 DONNA GARCIA, No. C-11-1253 EMC
9 Plaintiff,
10 v.
11 RESURGENT CAPITAL SERVICES, LP, *et al.*,
12 Defendants.
13 _____ /

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL**
(Docket No. 100)

15 Plaintiff has filed a motion to compel the attendance of three witnesses at trial: Jean Paul
16 Torres, Jonathan Birdt, and Erica Brachfeld. Docket No. 100. The motion to compel Mr. Torres's
17 attendance at trial has been rendered moot by the parties' stipulations to produce said witness. *See*
18 Docket No. 107. Accordingly, the Court **DENIES** the motion to compel as to Mr. Torres as moot.
19 Additionally, Brachfeld does not oppose the motion to compel as to Ms. Brachfeld, Docket No. 106;
20 thus the motion to compel is **GRANTED** as to Ms. Brachfeld.

21 As for Mr. Birdt, Brachfeld's 30(b)(6) designee, Brachfeld's only argument against
22 compelling him to attend trial is that he is outside the 100-mile radius in which the Court can compel
23 his attendance. Opp. at 2. However, the Court has the power to compel his attendance at trial
24 because, according to the docket sheet in this matter and Mr. Birdt's own representations, he resides
25 in and/or does business within the state. *See* Fed. R. Civ. P. 45(b)(2), (c)(A)(ii) ("[S]ubject to Rule
26 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place
27 within the state where the trial is held."); *Chung v. Chrysler Corp.*, 903 F. Supp. 160, 165 (D.D.C.
28 1995) ("Under the revised rule, a federal court can compel a witness to come from any place in the

United States District Court
For the Northern District of California

1 state to attend trial, whether or not the local state law so provides.”) (citing Advisory Committee
2 Note to 1991 Amendments to Rule 45; 9 Wright & Miller, Practice and Procedure § 2451 (1994
3 Supp.) (purpose of Rule 45 as amended is “to enable the court to compel a witness found within the
4 state in which the court sits to attend trial”); David D. Siegel, *Federal Subpoena Practice Under The*
5 *New Rule 45 of the Federal Rules of Civil Procedure*, 139 F.R.D. 197, 210, 215 (1992)). Brachfeld
6 makes no argument or showing that Mr. Birdt’s attendance would cause him to “incur substantial
7 expense.” Rule 45(c)(3)(B)(iii). Accordingly, the Court **GRANTS** Plaintiff’s motion to compel Mr.
8 Birdt’s attendance at trial.

9 Brachfeld also appears to challenge a subpoena apparently served upon Nasif, Hicks, Harris
10 & Co. As this issue is not within the scope of the parties’ briefing previously ordered by the Court,
11 the Court does not consider it.

12 This order disposes of Docket No. 100.

13
14 IT IS SO ORDERED.

15
16 Dated: April 27, 2012

17
18 
EDWARD M. CHEN
United States District Judge

19
20
21
22
23
24
25
26
27
28